

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 29, 2006

GSBCA 16735-TRAV

In the Matter of DIANE RODILL

Diane Rodill, Washington, DC, Claimant.

Francis R.A. Sheed, Associate General Counsel, Office of the General Counsel, Peace Corps, Washington, DC, appearing for Peace Corps.

DeGRAFF, Board Judge.

In our February 9, 2006 decision, we concluded Diane Rodill did not incur any excess costs when she purchased an airline ticket for \$1014, instead of using an airline ticket the Peace Corps purchased for her for \$563. In part, the basis for our decision was that Ms. Rodill was not eligible to use the ticket the agency purchased for her because the ticket was purchased using a missionary fare.

On March 10, 2006, the agency asked us to reconsider our decision. In support of its request, the agency says the “question of what type of fare code was on Ms. Rodill’s ticket or whether she was eligible to use the ticket was not raised or argued” before the Board. Also, the agency says Ms. Rodill’s ticket was not purchased using a missionary fare, and offers an affidavit in support of this contention.

We deny the request for reconsideration. The issue of whether the agency provided Ms. Rodill with a \$563 airline ticket for her use was squarely presented as an issue by Ms. Rodill in her submission to the Board, and the parties had the opportunity to address the issue. Even if reconsideration were warranted, the affidavit the agency offers to show the fare was not a missionary fare would not persuade us to alter our original conclusion.

When Ms. Rodill submitted her request for review to the Board, she discussed at length her doubts about whether the agency had actually been able to purchase a ticket for her use at the price it claimed to have paid. In the course of her discussion, she said:

Not only has Peace Corps not produced the ticket Post claimed to have been able to acquire for \$576.00 [sic] or the associated Purchase Order, Peace Corps has neither cited nor quoted any relevant provisions of any travel regulations, government/airline contract, airline tariff, or any other authority that would establish Peace Corps could have acquired a ticket for the price claimed.

Claimant's Request for Review at 17. In support of her position, Ms. Rodill provided a message from the Embassy's travel office, which said the economy class air fare paid by government employees at the time she traveled was \$1014. She also provided evidence to show the air fare was approximately the same amount a year earlier and a year later.

In response to Ms. Rodill's request for review, the agency produced a copy of the airline ticket it purchased for her. The agency said the ticket was an economy class ticket and the fare was an economy fare. Agency's Response at 14-17. In support of its position, the agency submitted an affidavit from the manager of the travel agency which purchased the ticket. The manager said the fare of \$563 was "representative of the fair market value cost of a one-way economy ticket." Affidavit of Stephen Mungai (Nov. 7, 2005) ¶ 7. Also in support of its position, the agency submitted an affidavit from one of its employees who said the cost of Ms. Rodill's "one-way economy fare ticket" was "completely in line with other fares for similar flights [the agency] had booked around that time." The affiant identified "former Peace Corps employee Jason Kinker" as someone who traveled using a ticket which cost approximately the same as the one the agency purchased for Ms. Rodill. Affidavit of Eric Mungai Kamau (Nov. 2, 2005) ¶ 14.

Ms. Rodill replied by presenting evidence which showed Jason Kinker was a Peace Corps volunteer, not an employee. She said the Peace Corps had produced no credible evidence to show the ticket was anything other than a "heavily discounted ticket purchased at a so-called 'missionary rate' that airlines sometimes make available to [Peace Corps] volunteers." Claimant's Reply at 1.

Ms. Rodill's request for review placed before us the issue of whether the agency had actually purchased a ticket for her use for \$563. She challenged whether any regulations, contracts, tariffs, or other authority would have allowed the agency to purchase a ticket for her at this price. She showed the price the agency claimed to have paid was little more than half the price of an economy class fare paid by government employees when she traveled, before she traveled, and after she traveled. Clearly, the agency understood the validity of the

ticket price was at issue because in its response, it said the ticket was an economy class ticket purchased at an economy class fare, and it also said the fare was in line with the fare for a similar flight taken by another employee. After Ms. Rodill pointed out that the other “employee” was actually a volunteer and after she posited that the fare for her ticket and the volunteer’s ticket was a missionary fare available to volunteers, not employees, the agency never asked to submit anything more in support of its position. True, the parties’ submissions were complete at that point. However, if the agency believed Ms. Rodill’s reply submission introduced a new and surprising issue, we would have expected it to ask to respond. In truth, the question of whether the agency had been able to purchase a \$563 ticket which Ms. Rodill could have used to travel was an issue in this matter from the outset, and it was addressed by Ms. Rodill and the agency in their submissions. The agency’s desire to address this issue once again does not justify reconsideration.

Even if reconsideration were warranted, the affidavit the agency now offers to show the \$563 fare was not a missionary fare would not persuade us to reach a result different from the one we reached initially. The affidavit is offered by the same individual who previously submitted an affidavit which said the fare of \$563 was “representative of the fair market value cost of a one-way economy ticket.” Mungai Affidavit at ¶ 7. The affiant now says the fare was a “special fare” which was available to the Peace Corps and which happened to be the same as the missionary fare. Affidavit of Stephen Mungai (Mar. 9, 2006) ¶¶ 4, 5. So, we have two affidavits from one person, stating that the \$563 fare was either the fair market value of an economy ticket, or a special fare which was the same as the missionary fare and which was made available to a limited market consisting of agency employees. Inconsistent evidence is not persuasive evidence.

In addition, the affiant says in his most recent affidavit that the airline’s missionary fare code does not appear on Ms. Rodill’s ticket. The fare code appears on the ticket in the block labeled “fare basis.” As we said in our decision, according to the General Services Administration’s (GSA’s) Audit Division, the fare code shown on Ms. Rodill’s ticket is for a missionary fare. GSA’s Audit Division is the government agency responsible for ensuring that airline carriers impose charges consistent with their quotations, contracts, tenders, and tariffs. The staff conducts audits of transportation charges, identifies overcharges, adjudicates claims related to audit actions, and provides technical advice and guidance regarding rates. 41 CFR pt. 102-113 (2005). The Audit Division has a great deal of expertise in deciphering the basis for airline fares and also has no stake in the outcome of this matter. Even if reconsideration were justified, the expert advice we received from the Audit Division would outweigh the inconsistent statements made by the agency’s affiant.

The motion for reconsideration is denied.

MARTHA H. DeGRAFF
Board Judge